IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

Bail Appl..No. 6790 of 2007()

CRIME NO.303/2002 OF PATHANAPURAM POLICE STATION

PETITIONERS/ACCUSED 2 TO 5:

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1. PRADEEP, S/O.MADHAVAN PILLAI, REGHU VILASOM, CHEMPARATHI MUKKU, KARIMPALLOOR, PATTAZHI VADAKKEKARA, PATHANAPURAM.

2. MOHANAN PILLAI, S/O.BHARGAVAN PILLAI, THENGUMTHOTTATHIL VEEDU, METHUKUMMEL, PATTAZHI VADAKKEKARA, PATHANAPURAM.

3. SHIBU, S/O.MUHAMMED HANEEFA, SUDHEER MANZIL, CHEMPARATHI MUKKU, KARIMPALLOOR, PATTAZHI VADAKKEKARA, PATHANAPURAM.

4. SAJEEV, S/O.BHARGAVAN, EETTIVILA VEEDU, VARIKOTTIL MUKKU, PATTAZHI VADAKKEKARA, PATHANAPURAM.

BY ADV. SMT.VIVEEJA RAVEENDRAN

RESPONDENTS: COMPLAINANTS

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1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. SUB INSPECTOR OF POLICE, PATHANAPURAM POLICE STATION, KOLLAM DISTRICT.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No. 6790 of 2007

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Dated this the 14th day of November, 2007

ORDER

Application for anticipatory bail. Petitioners are accused 2 to 5. Altogether there are 5 accused persons. They face allegations inter alia, under Section 3 of the Prevention of Damage to Public Property Act. The petitioners along with another were allegedly members of the unlawful assembly of persons who threw stones at a K.S.R.T.C bus and caused loss to the property. Petitioners 1 and 2 are named in the FIR. According to the learned counsel for the petitioners there was no unlawful assembly at all. It was a peaceful protest march against enhancement of electricity charges by the Government. If some of the miscreants in such a march have thrown stones at the K.S.R.T.C bus, petitioners cannot be mulcted with culpable liability with the aid of Sec.149 IPC, submits the learned counsel for the petitioners. In these circumstances, anticipatory bail may be granted to the petitioners, it is prayed.

2. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the investigation is

already complete. Final report has been filed. Cognizance has been taken. Calender case has been registered. It is for the petitioners now to appear before the learned Magistrate and seek regular bail. The calender case has been registered as early as in 2004. As petitioners were not available for trial the case has been transferred to the list of long pending cases in 2007. There is absolutely no merit in the prayer for invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This is a fit case where the petitioners must appear before the learned Magistrate and seek regular bail in the ordinary and normal course, submits the learned Public Prosecutor.

3. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be issued in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded in the facts and circumstances of this case that any such reasons exist.

4. It is for the petitioners to appear before the learned

Magistrate and explain to the learned Magistrate the circumstances under which they could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

5. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

(R.BASANT, JUDGE)

sj